

MEMORANDUM OF LAW

DATE: January 9, 1991

TO: H. R. Frauenfelder, Deputy City Manager

FROM: City Attorney

SUBJECT: Cost Allocation of Backflow Devices at Park and Recreation Facilities

By note of December 20, 1990, you asked for our opinion on whether the Water Utilities Department could fund the installation and maintenance of backflow prevention devices at Park and Recreation Department facilities.

Backflow devices are aimed at regulating potable water lines in order to prevent contaminated water from returning to the potable water line. California Health and Safety Code sections 4049.50 and 4049.51; San Diego Municipal Code section 67.05. Such devices do not operate to protect sewer lines. This distinction is critical since, as we have often cautioned, the use of water revenues is severely restricted by San Diego City Charter section 53 while sewer revenues are governed by the less restrictive rules of San Diego Municipal Code section 64.0403.

The more stringent restrictions were succinctly summed up in City Attorney Opinion No. 80-8, June 25, 1980:

From the adoption of the 1931 Charter until now, the philosophical concept of a fiscally self-sufficient and self-sustaining Water Department has been prevalent and opinions of this office have consistently articulated that concept. (See 1932 Ops. S.D. City Atty. 177-182; 1932 Ops. S.D. City Atty. 362-363; 1933 Ops. S.D. City Atty. 526-531; 1947 Ops. S.D. City Atty. 98-100; 1965 Ops. S.D. City Atty. 23; 1966 Ops. S.D. City Atty. 157-165; 1967 Ops. S.D. City Atty. 37-40.)

Many of those opinions note that even with substantial changes in the language of the section, the underlying philosophical concept remains the same, i.e., a self-sustaining, financially independent water utility.

. . . .

In summary we believe that to preserve the Water Utility's financial and fiscal integrity and meet the mandate of City Charter Section 53, the City Council, irrespective of bond covenants or restrictions and regardless of the pressure from special interest groups, must examine the disposal of any asset of the Water Utility in a manner which provides the Water Utility with full value for the asset. With this Charter mandate in mind the City Council can meet its responsibilities in accordance with the City Charter provisions.

Opinion No. 80-8 restricted the use of surplus Water Utility land; similarly, Water Utility revenues must be treated the same. Water Utility revenues cannot be utilized to pay for the installation and maintenance of backflow prevention devices without a showing that this directly benefits the assets of the Water Utility. If the City Manager can demonstrate that such devices protect and benefit the water piping system of the utility versus the peculiar pipes of the recreation facility, expenditures would be proper. Absent such a showing, the expenditures are improper.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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